

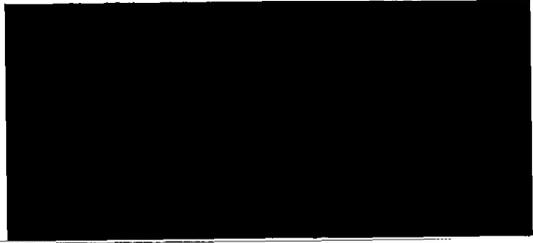
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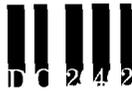


**Digests of Decisions
of the Comptroller
General of the
United States**

Vol. IV, No. 3



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Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, Pub. L. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by the file number and date, e.g., B-229329.2, Sept. 29, 1989. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies, in monthly pamphlets and in annual volumes. Decisions in these volumes should be cited by volume, page number and year issued, e.g., 68 Comp. Gen. 644 (1989).

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Appropriations/Financial Management

B-246211.2, December 7, 1992

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Personal property
- ■ ■ Losses

Section 636(b) of the Foreign Assistance Act of 1961 which authorizes Agency for International Development (AID) to make payments for administrative and operating purposes without regard to laws and regulations governing the obligation and expenditure of funds, does not authorize AID to make payments for employee's claims for personal property losses in excess of the \$40,000 ceiling on such claims set by the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. § 3221(b).

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Personal property
- ■ ■ Losses

In order to authorize the use of section 636(b) to provide relief to employees of its contractors and grantees, AID must show that successful implementation of the Foreign Assistance Act would be jeopardized if such relief were not provided. AID is not authorized to provide such relief merely because it wishes to treat these employees in the same manner as its own employees.

B-251499, December 7, 1992

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Maintenance/operation accounts

Appropriations/Financial Management

Obligation

- Funds transfer
- ■ Authority
- ■ ■ Maintenance costs

The Secretary of the Interior is authorized to transfer funds to a separate Treasury account for use by the Board of Trustees of the John F. Kennedy Center for the Performing Arts for the repair and renovation of the Kennedy Center, including repair of rigging and other theatrical facilities within the Kennedy Center.

B-242974.8, December 11, 1992***

Appropriations/Financial Management

Obligation

- Expenditure recording
- ■ Revolving accounts

The Corps of Engineers is required under 31 U.S.C. § 1501 to recognize and record obligations of its Civil Works Revolving Fund when it awards contracts to be financed by the Fund. The Corps also is prohibited by the Antideficiency Act (31 U.S.C. § 1341(a)(1)(A)) from overobligating the Fund's available budget authority. These provisions are generally applicable to revolving funds, and no law has exempted the Fund from them.

B-250953, December 14, 1992***

Appropriations/Financial Management

Budget Process

- Prior year accounts
- ■ Adjustments
- ■ ■ Refunds

Appropriations/Financial Management

Budget Process

- Prior year accounts
- ■ Refunds
- ■ ■ Accounting

This Office has no objection to agencies accepting a credit and applying it against a current year invoice in order to effect a refund of prior year payments in lieu of requiring a vendor to issue a refund check, unless the method of making the refund is specifically governed by a law, regulation, or contract. If the credit is for a "de minimis" amount of \$100 or less, this Office also has no objection to agencies accepting the "de minimis" credit without adjusting the prior year accounts to reflect the credit as a refund to the accounts.

B-249249, December 17, 1992

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Meals

A Special Agent in Charge represented the Federal Bureau of Investigation (FBI) at a retirement banquet honoring a local police chief and presented him with a plaque and commendation letter from the FBI Director. The cost of the banquet may be reimbursed since the agent's attendance at the function was in furtherance of the agency's functions or activities for which its appropriations are made and the meal was incidental to the retirement ceremony.

B-251107, December 21, 1992

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Retirement plans
- ■ ■ Retirement bonuses

Government Printing Office may not use appropriated funds to provide cash retirement incentives to eligible employees as part of its Retirement Incentive Plan without express statutory authority.

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Publicity/propaganda

Environmental Protection Agency (EPA) expenditure for buttons and magnets inscribed with messages related to indoor air quality for distribution at EPA conferences is a proper use of EPA's appropriated funds since the items are intended to convey a message related to EPA's mission.

Civilian Personnel

B-246211.2, December 7, 1992

Civilian Personnel

Compensation

- Personal property
- ■ Losses
- ■ ■ Liability restrictions

Section 636(b) of the Foreign Assistance Act of 1961 which authorizes Agency for International Development (AID) to make payments for administrative and operating purposes without regard to laws and regulations governing the obligation and expenditure of funds, does not authorize AID to make payments for employee's claims for personal property losses in excess of the \$40,000 ceiling on such claims set by the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. § 3221(b).

B-249684, December 9, 1992

Civilian Personnel

Relocation

- Household goods
- ■ Temporary storage
- ■ ■ Shipment costs
- ■ ■ ■ Weekends/holidays

A transferred employee, who was receiving temporary quarters subsistence expenses, purchased a residence at his new duty station with the closing held on a Friday. In order to save the government the continued cost of temporary quarters and storage charges over the weekend, he arranged for Saturday delivery of the household goods at extra cost. Since the agency could have authorized the Saturday delivery under those circumstances, the agency may allow the employee's claim for the extra delivery cost if it determines that he acted prudently in the government's interest and reduced the government's overall expenses. In that event, the prohibition in 41 C.F.R. § 302-8.5(b)(2) on reimbursing an employee for services obtained at higher costs would not apply. *Richard D. Holland, B-231590, Sept. 1, 1989, distinguished.*

B-249311, December 14, 1992

Civilian Personnel

Compensation

- Overpayments
 - ■ Error detection
 - ■ ■ Debt collection
 - ■ ■ ■ Waiver
-

Civilian Personnel

Relocation

- Household goods
- ■ Shipment
- ■ ■ Restrictions
- ■ ■ ■ Privately-owned vehicles

A transferred employee was erroneously issued travel orders authorizing him to ship his privately-owned automobile (POV) from his old to his new duty station at government expense. The employee's claim for reimbursement is denied since there is no statutory authority which provides for shipment of a POV at government expense within the continental United States. Further, since the employee's legitimate expenses exceeded the amount of his travel advance, there is no net indebtedness which would be appropriate for waiver consideration under the provisions of 5 U.S.C. § 5584 (1988).

B-249249, December 17, 1992

Civilian Personnel

Travel

- Permanent duty stations
- ■ Actual subsistence expenses
- ■ ■ Prohibition

A Special Agent in Charge represented the Federal Bureau of Investigation (FBI) at a retirement banquet honoring a local police chief and presented him with a plaque and commendation letter from the FBI Director. The cost of the banquet may be reimbursed since the agent's attendance at the function was in furtherance of the agency's functions or activities for which its appropriations are made and the meal was incidental to the retirement ceremony.

B-249500, December 24, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Loan origination fees
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

Claim for loan origination fee in excess of 1 percent of the loan amount is denied because the loan origination fee is not itemized, and because the claimant has not shown by clear and convincing evidence that the amount in excess of 1 percent of the loan amount does not include prepaid interest, points, or a mortgage discount, as required by 41 C.F.R. § 302-6.2(d)(1)(ii) (1991).

Military Personnel

B-241926.2, December 7, 1992

Military Personnel

Pay

■ National Guard personnel

■ ■ Part-time employment

A National Guard member performing full-time National Guard duty under 32 U.S.C. § 502(f) may be appointed a part-time United States magistrate under 28 U.S.C. § 631, since such duty is performed under state control and the member is not considered as performing active duty in the service of the United States.

Military Personnel

Pay

■ Reservists

■ ■ Active duty status

■ ■ ■ Part-time employment

A reservist performing active duty under 10 U.S.C. § 672(d) is not eligible for appointment as a United States magistrate under 28 U.S.C. § 631 since while on active duty he would be holding military office under the United States and Congress considered active duty and service as a United States magistrate incompatible since provision was made to grant leaves of absences when magistrates are called to active duty in the armed forces of the United States.

Miscellaneous Topics

B-248647, December 28, 1992

Miscellaneous Topics

Finance Industry

■ Financial institutions

■ ■ Authority

■ ■ ■ Financing

■ ■ ■ ■ Government projects

In response to questions regarding the financing of the Federal Triangle International Cultural and Trade Center-Federal Office Building through the Federal Financing Bank (FFB), we conclude that the FFB is appropriate as a source of financing because the Federal Triangle Building is fundamentally a project being constructed by the federal government.

Procurement

REDACTED VERSION

B-242957.7, April 3, 1992

Procurement

Competitive Negotiation

- Contract awards
 - ■ Propriety
-

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Technical acceptability
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Award of contract was improper where equipment proposed by awardee failed to comply with solicitation requirements; agency had no reasonable basis for determining that equipment proposed by awardee met solicitation requirements where agency had advised the protesters that the same equipment offered in their proposals was technically unacceptable.

B-249504, December 1, 1992

92-2 CPD 386

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that solicitation for long-term lease required rejection of offer based on stepped rents is without merit where (1) the solicitation for offers did not explicitly prohibit stepped pricing; (2) the solicitation's price evaluation scheme, involving the use of net present value analysis, was suited to stepped pricing; (3) protester itself had offered stepped pricing in prior proposals; and (4) protester failed to show that agency misled it in discussions into believing that stepped pricing was no longer permitted.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Procuring agency adequately documented evaluation where record contained contemporaneous evaluation narrative, agency provided further detailed narrative explanations during protest, and, as a consequence, there was sufficient detail to judge the reasonableness of the evaluation.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Cost savings

In a negotiated procurement for the lease of office space, award was properly made to the low-priced offeror, where technical considerations were stated to be less important than cost and the procuring agency reasonably determined that the offers were technically equal.

B-249411.2, December 2, 1992

92-2 CPD 387

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Contracting agency adequately conducted discussions regarding agency's concern with the staff and hours proposed for particular labor categories where a discussion request addressed to the offeror instructed it to reexamine the staff and hours proposed for the categories in question.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to offeror submitting higher-priced, technically superior proposal under request for proposals which gave greater weight to technical merit than to price is justified where contracting agency reasonably determined that acceptance of the superior proposal was worth the additional cost.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Pre-award samples
- ■ ■ ■ Waiver

Agency properly rejected low bid under invitation for bids (IFB) containing bid sample requirement, where the bid, asserting reliance upon the IFB's waiver provision, failed to include a bid sample and the agency was unable to determine that the previously accepted product met the IFB requirements.

REDACTED VERSION

B-250395.2, December 3, 1992

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Government estimates
- ■ ■ Wages rates

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Wage rates
- ■ ■ ■ Applicability

Contracting agency's disagreement with a Department of Labor (DOL) wage determination which is based on an argument presented to DOL before the wage determination was issued, does not justify failure to incorporate that wage determination in a solicitation.

Procurement

Socio-Economic Policies

- Labor standards
- ■ Wage rates
- ■ ■ Modification
- ■ ■ ■ Effects

Where procuring agency's appropriately detailed analysis of proposals indicates that a revised wage determination, received after proposals were submitted, would not affect the award selection, protester was not prejudiced by agency decision not to amend the solicitation to incorporate the wage determination and permit offerors to submit revised proposals.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Protest by small business incumbent contractor that the contracting agency failed to provide it a copy of the solicitation is sustained where record shows that the procuring agency improperly failed to include the incumbent contractor on the solicitation's mailing list and the protester had a reasonable expectation that it would receive a copy of the solicitation.

B-249555, December 4, 1992

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Protest that agency failed to provide sufficient information to bidders regarding the status of tool kits to be supplied as government furnished equipment on an "as is" basis is denied where solicitation invited bidders to visually examine the tool kits at a site visit where additional information relating to their status was available.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Protest that agency failed to clearly state what types of contractor experience would be used to evaluate responsibility is denied where solicitation was amended to unambiguously provide that corporate experience as well as the experience of corporate officers and project managers could be acceptable.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Protest that agency misled bidders as to the nature of required maintenance services in a statement filed with the Small Business Administration is denied where record shows that the agency's representation of the solicitation provisions regarding maintenance was accurate.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Criteria

Although solicitation for support of an ocean construction program did not specifically state that a particular platform that had been part of the program would no longer be included, protester was adequately apprised of the changed program requirements where protester, the incumbent contractor, met with the agency to discuss funding problems for the platform and its likely removal from the program, and received solicitation amendments which sharply reduced the agency's estimated requirements for the program.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Where solicitation allowed for payment of 35 percent premium for outstanding (compared to acceptable) proposal, and "limited" premium for a better (compared to acceptable) proposal, agency's decision to pay 12 percent more as limited premium for better proposal was reasonable.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to a technically superior, higher priced offeror is proper where an award on that basis is consistent with the solicitation evaluation criteria—technical factors were more important than price for the purposes of proposal evaluation—and the agency reasonably determined that the superior technical merit of the successful proposal was sufficiently significant to justify an award at a higher price.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing protest as untimely is denied where the protest was filed at the General Accounting Office more than 10 days after initial decision denying agency-level protest; protester's continued pursuit of protest with the agency does not toll timeliness requirements, and the fact that the protester may not have intended its initial submission to agency to constitute a protest does not change the character of a submission which clearly constituted a protest.

Procurement

Sealed Bidding

- Bids
- ■ Minor deviations
- ■ ■ Acceptability

Protester's failure to submit its low bid on the invitation for bid's (IFB) revised bidding schedule added by an IFB amendment may be waived as a minor informality, where the protester acknowledged all amendments, the bid on the initial IFB bidding schedule obligated the protester to meet all the amended IFB's material requirements and the revised bid schedule added no new work.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Technical rating of "marginally acceptable" as to past performance evaluation factor is reasonable where firm has been delinquent on recent contracts for similar items, and record shows that delinquencies were attributable at least in part to protester.

Procurement

Competitive Negotiation

- Offers
- ■ Designs
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Standard band saw to which manufacturer adds various stock components to satisfy customer requirements was properly determined to meet solicitation requirement that band saw be one of the manufacturer's current models.

Procurement

Competitive Negotiation

- Offers
- ■ Designs
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Solicitation requirement that band saw be manufacturer's current model does not preclude offeror from making minor modification to current model to meet agency's specifications.

Procurement

Competitive Negotiation

- Alternate offers
- ■ Rejection
- ■ ■ Propriety

Protest that agency failed to provide reasonable opportunity for offeror to qualify its alternate product is denied where agency was unable to complete the requisite review in time to make an award which would satisfy its need for the specified item, for which there were a number of high priority back-orders.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where agency properly rejected protester's bid bond as ambiguous, and protester essentially raises same matters on reconsideration as were raised in its original protest.

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Use
- ■ ■ Administrative discretion

Protest that agency improperly decided to set procurement aside for small business concerns is denied where the agency reasonably concluded that it would receive bids from at least two small business concerns in response to the solicitation and the procurement did in fact generate sufficient small business interest.

Procurement

Sealed Bidding

- Bids
- ■ Error correction
- ■ ■ Low bid displacement
- ■ ■ ■ Propriety

Where agency initially issues solicitation on unrestricted basis and subsequently determines, shortly before bid opening date, to set procurement aside for small business concerns, claim for bid preparation costs is denied since there is no evidence of bad faith on the agency's part.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Nonbidding protester alleging that invitation for bids for real estate closing services unduly restricted competition is an interested party eligible to protest, because if the protest is successful and the procurement resolicited without the restrictive provision, the protester will be eligible to compete.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Geographic restrictions
- ■ ■ ■ Closing services

Invitation for bids (IFB) for realty closing services to be performed in Texas was improperly restricted to attorneys only where Texas statute, case law and Attorney General's opinion do not prohibit protester—a title company—from hiring an independent law firm to perform the law-related services required and then seeking reimbursement for costs so incurred.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Performance specifications
- ■ ■ ■ Geographic restrictions

Agency reasonably imposed a geographic limitation as a prerequisite for consideration of responses to a solicitation for architect and engineer services based on the nature of the project which required prompt site coordination.

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Agency properly excluded proposal from the competitive range where the offeror had no reasonable chance of award because its proposal failed to provide specific technical information concerning its proposed method of performance, as was required by the solicitation, and correction would require major revision of the proposal.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Where a procurement has been set aside for small disadvantaged businesses (SDB) and the cognizant office of the Small Business Administration (SBA) has determined that the protester does not qualify as an SDB for purposes of the procurement, the protester is not an interested party to challenge the proposal evaluation, notwithstanding a pending appeal within the SBA.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Oral notification
- ■ ■ ■ Adverse agency actions

Where protester was orally informed of basis of protest, it may not delay filing protest with agency until receipt of written notification reiterating protest basis; where agency-level protest was not timely filed, subsequent protest to General Accounting Office also is untimely.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Requests for proposals

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest against conversion of invitation for bids to a negotiated procurement is untimely where filed after the closing date for submission of proposals; protest of defects apparent in solicitation must be filed prior to closing date.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Request for reconsideration is untimely where not filed within 10 days after receipt of decision denying protest, and it is based, not on alleged errors in original decision, but on alleged inconsistency with decision in unrelated case issued 1 month later.

Procurement

Special Procurement Methods/Categories

- Architect/engineering services
- ■ Contractors
- ■ ■ Evaluation

Agency's decision to terminate negotiations with the protester for architect-engineer services was not unreasonable where the agency discovered inaccuracies in the information regarding the firm's recent specialized experience in providing interior design services listed in the protester's Standard Forms 254 and 255 and determined after evaluation of protester's actual experience that another firm was ranked above the protester and in line for negotiations.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Adequacy

Protest challenging the rejection of a bid as nonresponsive on the basis that descriptive literature submitted with the bid failed to establish that the offered equipment conformed to the specifications is sustained where the solicitation effectively did not require descriptive literature, and the bid did not take exception to any of the solicitation's requirements.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

The General Accounting Office will not review a procuring agency's affirmative determination of responsibility absent a showing of fraud, bad faith, or the misapplication of a definitive responsibility criterion; a specification requirement that a certain aluminum alloy be used in manufacturing tension fabric structures is not such a criterion.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel

Agency was not required to disclose to offerors the government's staffing model which was used in evaluating offerors' proposed staffing levels.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Discussions regarding offeror's proposed staffing mix were adequate where agency questioned offeror's ability to perform work with the proposed staffing levels, thereby leading offeror into the area of agency's concern.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to higher cost, higher rated proposal was proper where solicitation weighted technical factors more heavily than cost and agency reasonably concluded that higher rated proposal was worth the cost premium.

B-249733, December 14, 1992

92-2 CPD 410

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Protest that agency improperly eliminated firm's proposal from the competitive range after initial review of technical proposal is denied where record shows that agency reasonably determined that protester had no reasonable chance of receiving award because technical deficiencies in proposal could not be remedied without substantial rewrite of proposal.

B-249750, B-249750.4, December 14, 1992

92-2 CPD 411

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Subcontractors

Protest by large business which challenges the propriety of an award under a total small business set-aside is not for consideration where protester participated only as a subcontractor and the record is clear that even if the procurement were resolicited, it would again be solicited as a total small business set-aside.

Procurement

Contractor Qualification

- Approved sources
- ■ Alternate sources
- ■ ■ Approval
- ■ ■ ■ Government delays

In a negotiated procurement for a critical, source approved item, the procuring agency unreasonably failed to provide to the using agency, which conducted all source approval evaluations for critical items, the protester's technical drawings for its alternate product that the protester provided in its best and final offer in response to the agency's discussions, and the agency thereby deprived the offeror of an opportunity to qualify its product to compete for award.

Procurement

Contract Management

- Contract administration
- ■ Options
- ■ ■ Use
- ■ ■ ■ GAO review

Protest that agency improperly exercised option in contract for the production of food stamps is sustained where the record shows that the agency's food stamp requirements have increased, the market for intaglio printing may not be stable, and the agency did not conduct a market survey or issue a new solicitation to test the market to determine if exercise of the option was the most advantageous method of meeting its needs.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Geographic restrictions
- ■ ■ ■ Justification

Geographic restriction requiring an offeror to have a facility within a 40-mile radius of the installation is reasonable where periodic consultations may be required and additional distance could impair communications between medical staff and contractor.

Procurement

Competitive Negotiation

- Discussion
 - ■ Adequacy
 - ■ ■ Criteria
-

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Adequacy

Where agency advised protester of its concern that protester's proposed staffing level for full food services was inadequate to perform the required work load at military mess hall and offered the protester a reasonable opportunity to revise its approach, agency satisfied the requirement for meaningful discussions by leading protester into area of its proposal perceived as deficient.

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Use
- ■ ■ Administrative discretion

Protest that agency improperly decided to set procurement aside for small business concerns is denied where the agency reasonably concluded that it would receive bids from at least two small business concerns in response to the solicitation.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ GAO review

Protest that specifications for a theta/theta goniometer and a solid-state detector to be used in an X-ray diffractometer for analyzing various substances are unduly restrictive of competition is denied where the record shows that the requirements are necessary to meet the agency's minimum needs.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Procurement

Contractor Qualification

- Responsibility
- ■ Financial capacity
- ■ ■ Contractors

Protest that agency improperly made award to offeror submitting higher priced proposal is denied where protester was found nonresponsible because of lack of demonstrated financial capability. Contracting agency's decision to conduct discussions with the protester prior to his finding of non-responsibility concerning its technical proposal did not constitute an affirmative determination of responsibility.

Procurement

Contractor Qualification

- Responsibility
- ■ Financial capacity
- ■ ■ Contractors

Agency is not required to conduct discussions regarding responsibility matter such as offeror's financial capability.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

New grounds of protest must independently satisfy the timeliness requirements of the General Accounting Office's Bid Protest Regulations. Where new grounds of protest were first raised in comments on contracting agency's bid protest report, protest is untimely when filed more than 10 working days after protester received the bid protest report which contained the bases for the new protest grounds.

Procurement

Sealed Bidding

- Bids
- ■ Bid guarantees
- ■ ■ Omission
- ■ ■ ■ Responsiveness

The failure to furnish a bid guarantee, required for all bids, including those under \$25,000, renders a bid nonresponsive.

Procurement

Sealed Bidding

- Bids
- ■ Late submission
- ■ ■ Acceptance criteria
- ■ ■ ■ Government mishandling

Protest against agency's consideration of a late bid is denied where government's actions were the paramount cause of the bid's late arrival and the integrity of the procurement system would not be compromised by consideration of the bid.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Bid Protest Regulations require party requesting reconsideration of prior decision to show that decision contains errors of fact or law or to present information not previously considered that warrants reversal or modification of decision; repetition of arguments made during consideration of original protest and mere disagreement with decision do not meet this standard.

Procurement

Bid Protests

- Agency-level protests
- ■ Protest timeliness
- ■ ■ GAO review

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest challenging propriety of second request for best and final offers that was initially untimely filed with the procuring agency will not be considered since it is untimely when subsequently filed with the General Accounting Office.

Procurement

Competitive Negotiation

- Technical transfusion/leveling
- ■ Determination criteria

Agency's follow-up discussion question regarding inadequate staffing levels after offeror had been initially advised of that deficiency did not constitute technical leveling where offeror's initial proposal was unacceptable due, in part, to misleading data regarding historical and projected staffing levels which had been provided in the solicitation.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Denial of entitlement to costs is affirmed where corrective action was not taken in response to clearly meritorious protest, and where protester does not demonstrate that decision was based on an error of fact or law.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Design specifications
- ■ ■ ■ Justification

Where solicitation did not prohibit design feature proposed by awardee, agency reasonably concluded that proposal met the minimum requirements for technical acceptability.

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Protest of the exclusion of an offeror's proposal from the competitive range is denied where the agency reasonably concluded in accordance with the solicitation evaluation criteria that the offeror did not adequately address major portions of the management plan required by the solicitation, and the management plan factor constituted 70 percent of the technical evaluation.

Procurement

Bid Protests

- GAO procedures
 - ■ GAO decisions
 - ■ ■ Reconsideration
-

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Potential contractors
- ■ ■ ■ Alternate sources

Where *Commerce Business Daily* (CBD) notice announcing agency's plans to make sole-source award contains footnote 22—giving other potential sources 45 days to submit expressions of interest showing their ability to meet agency's stated requirements—a potential source must first timely respond to the CBD notice and receive a negative agency response before its protest of the agency's sole-source decision will be considered by the General Accounting Office.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Leases
 - ■ ■ ■ Office space
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance
- ■ ■ ■ Leases

Agency decision to award lease for office space to lower-priced offeror was improper where (1) record indicates that evaluation was inconsistent with terms of solicitation and does not support agency's conclusion that awardee offered to comply with solicitation requirements, and (2) cost/technical tradeoff decision was not based on actual price difference between offers.

Procurement

Contract Management

- Contract administration
- ■ GAO review

Protester's contention that agency breached an implied-in-fact contract to maintain a split award approach to procuring computer systems is dismissed since a contractor's rights under an existing contract are a matter of contract administration beyond the scope of our bid protest jurisdiction.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Argument that agency did not evaluate offers properly because it awarded a contract to the lowest-priced offeror fails to state a valid basis for protest where agency was holding a price competition; the solicitation reserved the right to make one award, split awards, or no award—depending on what was most advantageous for the government; and the low-priced offeror's price for 100 percent of the agency's needs was 35 percent (more than \$20 million) less than the lowest overall price for split awards.

B-249673.2, December 22, 1992

92-2 CPD 428

Procurement

Sealed Bidding

- Invitations for bids
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Agency failure to solicit a small business concern, even though that firm had submitted a solicitation mailing list application well prior to issuance of the solicitation, violated Federal Acquisition Regulation provisions governing the distribution of solicitation documents and resulted in the agency's failure to obtain full and open competition.

B-249815, December 22, 1992

92-2 CPD 429

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Contract awards
- ■ ■ Propriety

Agency properly made delivery order award under a nonmandatory Federal Supply Schedule contract to the only schedule contractor meeting the government's minimum needs.

B-249863, December 22, 1992

92-2 CPD 430

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Geographic restrictions

Where solicitation for document storage center prohibited award for property in a flood plain or for property that abuts flood plain, unless there are no practicable alternatives, as required by an executive order, agency properly rejected an offer for a site that contained a flood plain and in fact could only be accessed by a private road that crossed through a flood plain area, as shown

both on flood insurance rate map and on offeror's site plan, where other acceptable offers were submitted.

B-249940, December 22, 1992

92-2 CPD 431

Procurement

Sealed Bidding

- Two-step sealed bidding
- ■ Responsiveness
- ■ ■ Terms
- ■ ■ ■ Deviation

Cover letter accompanying the step-two bid on a two-step sealed bid procurement proposing payment terms of "net 30 days," instead of "net 45 days," as required by the invitation for bids rendered the bid nonresponsive.

B-250204.2, December 22, 1992

92-2 CPD 432

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration
- ■ ■ ■ Comments timeliness

Dismissal of protest because the protester failed to file comments in response to the agency report or express continued interest in the protest within the time required by the General Accounting Office Bid Protest Regulations is affirmed; the contracting agency's alleged failure to furnish the protester the agency report does not nullify the protester's obligation to timely notify our Office of its nonreceipt of the agency report.

B-250700, December 22, 1992

92-2 CPD 433

Procurement

Sealed Bidding

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

Protest that agency improperly permitted low bidder to correct a mistake in its bid is denied where the bidder presented clear and convincing evidence that it mistakenly included two items in its bid at \$12,000 each instead of \$120,000 each.

B-248221.3, December 23, 1992

92-2 CPD 434

Procurement

Small Purchase Method

- Quotations
- ■ Evaluation
- ■ ■ Trade-in allowances

Trade-in allowances offered by Federal Supply Schedule vendors should be considered in the evaluation of quotations and in the determination of which quotations represent the lowest cost to the government.

Procurement

Small Purchase Method

- **Quotations**
- ■ **Evaluation**
- ■ ■ **Technical acceptability**

Rejection of dictation equipment is proper where the equipment will not fit into the only available space.

Procurement

Bid Protests

- **GAO procedures**
- ■ **Interested parties**

Protester whose equipment is unacceptable is not an interested party to protest that an award to another Federal Supply Schedule (FSS) vendor exceeds the maximum ordering limitation of that vendor's FSS contract.

B-249845.2, December 23, 1992

92-2 CPD 435

Procurement

Sealed Bidding

- **Invitations for bids**
- ■ **Terms**
- ■ ■ **Equipment**
- ■ ■ ■ **Age restrictions**

Protest that solicitation for rental and maintenance of washers and dryers is unduly restrictive because it requires contractor to install and maintain machines that will be no more than 3 years old during the term of the contract is denied where record establishes that older machines malfunction more frequently and that requirement is therefore necessary to reduce the delay and inconvenience caused by inoperative machines.

B-249897, December 23, 1992

92-2 CPD 436

Procurement

Noncompetitive Negotiation

- **Contract extension**
- ■ **Sole sources**
- ■ ■ **Propriety**

Agency properly justified sole-source award under 10 U.S.C. § 2304(c)(1) (1988), where only the awardee had previously performed the required fatigue testing on the solicited aircraft flight safety part and insufficient time remained to perform the fatigue testing on the protester's part for reasons not caused by a lack of advanced procurement planning.

B-249920, December 23, 1992

92-2 CPD 438

Procurement

Competitive Negotiation

- **Use**
- ■ **Criteria**

Protest that the agency was required to structure a private/public competition for engine overhauls to permit private offerors to furnish a portion of parts used in the overhaul process on a cost-reimbursable basis in order to equalize the competition with public sector offerors is denied where statute authorizing the competition does not require such equalization.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation errors
- ■ ■ ■ Allegation substantiation

Protest that solicitation did not provide for the submission of sufficient data from public sector offerors to support a thorough cost realism analysis is denied where record shows that supporting data was requested for all elements of cost.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Government estimates
- ■ ■ Defects
- ■ ■ ■ Allegation substantiation

Protest that estimated quantities of parts to be supplied in engine overhauls contained in a solicitation are inadequate is denied where record shows they were current and reasonably accurate.

B-249917, et al., December 23, 1992

92-2 CPD 437

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Liquidated damages
- ■ ■ ■ Propriety

Rates established for recovery of liquidated damages which are reasonably related to actual costs agency will incur do not constitute a penalty and are permissible.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Liquidated damages
- ■ ■ ■ Propriety

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Resolicitation
- ■ ■ ■ Additional costs

Solicitation may properly establish contractor's liability for both liquidated damages and excess procurement costs.

B-250059, December 23, 1992***

Procurement

Sealed Bidding

- Bids
- ■ Error correction
- ■ ■ Pricing errors
- ■ ■ ■ Line items

Where a bidder's unit and extended prices for a multi-unit line item are identical, the bid may be corrected to reflect a unit price that is consistent with the extended price if the unit price clearly is out of line with both the government estimate and the prices offered by the other bidders, and only the extended price reasonably can be regarded as having been the intended bid. The fact that the unit price at issue was inserted by the bidder in lieu of one which was crossed out does not preclude correction of the unit price as mistaken where that is the only reasonable conclusion.

B-250324, December 23, 1992**92-2 CPD 440****Procurement**

Contract Management

- Contract administration
- ■ GAO review

The General Accounting Office will not consider an allegation that an awardee will be unable to furnish the equipment that it has proposed, since whether an awardee can and will deliver equipment in conformance with contract requirements are matters of responsibility and contract administration.

Procurement

Competitive Negotiation

- Alternate offers
- ■ Acceptance
- ■ ■ Propriety

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Sample evaluation
- ■ ■ ■ Testing

Offered alternate item does not have to be subjected to qualification testing before award where the solicitation did not include a requirement for such testing.

Procurement

Bid Protests**■ Forum election****■ ■ Finality**

Procurement

Bid Protests**■ GAO procedures****■ ■ GAO decisions****■ ■ ■ Reconsideration**

Request for reconsideration of decision dismissing protest as untimely is denied where untimeliness was caused by protester's mistaken initial filing at the General Services Board of Contract Appeals (GSBCA); protester's lack of actual knowledge of GSBCA's jurisdictional limitations does not excuse failure to timely file protest at General Accounting Office.

Procurement

Bid Protests**■ GAO procedures****■ ■ Protest timeliness****■ ■ ■ Apparent solicitation improprieties**

Protests filed after closing date for receipt of proposals alleging that solicitations were ambiguous are untimely where any ambiguity was apparent on the face of the solicitations; protester could not simply make assumptions regarding the meaning of the solicitations and then expect relief when the agency did not act in the manner the protester assumed it would.

Procurement

Bid Protests**■ Intellectual property****■ ■ Disclosure****■ ■ ■ Non-prejudicial allegation**

Protest that awardee should be disqualified for possessing allegedly proprietary data is denied where internal agency investigation concluded that no improprieties occurred in the firm's obtaining the data and the data was not competitively useful by the time the protested procurement occurred.

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation errors****■ ■ ■ Allegation substantiation**

Protest that agency miscalculated protester's proposal featuring an optical disk system is denied where protester does not rebut agency's finding that the proposal failed to adequately explain how the system would meet the agency's needs.

Procurement

Competitive Negotiation

- **Contract awards**
- ■ **Initial-offer awards**
- ■ ■ **Discussion**
- ■ ■ ■ **Propriety**

Protest that agency failed to conduct discussions is denied where record shows that the agency had a reasonable basis for its decision to award a no-cost contract on the basis of initial proposals.

B-247198.6, December 28, 1992***

Procurement

Sealed Bidding

- **Unbalanced bids**
- ■ **Rejection**
- ■ ■ **Propriety**

Agency may not accept a front-loaded bid for refuse collection services where it was mathematically and materially unbalanced because the option year bid prices significantly declined from the base year bid prices, while the level of services required during each year of the contract remained constant, resulting in that mathematically unbalanced bid not becoming the lowest price to the government until the last year of a possible 5-year contract, thus creating doubt that the award will result in the lowest ultimate cost to the government.

B-246170.4, December 29, 1992

92-2 CPD 445

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation errors**
- ■ ■ **Evaluation criteria**
- ■ ■ ■ **Application**

Protest alleging defects in the evaluation of price and technical proposals is denied where the record establishes that the evaluation was reasonable and consistent with the solicitation.

B-248662.5, B-248662.7, December 29, 1992

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Technical acceptability**

Although proposed hazardous gas cylinder testing equipment theoretically may not be able to deal with all conceivable gases that might be encountered under contract for clean-up of former cylinder disposal site this did not render the proposal unacceptable where (1) RFP did not provide for evaluation of equipment on this basis and generally was geared towards gases most likely to be encountered; and (2) there is no showing that agency unreasonably determined that awardee's equipment was adequate to deal with gases likely to be encountered.

Procurement

Bid Protests

- **Allegation substantiation**
- ■ **Lacking**
- ■ ■ **GAO review**

Awardee's failure to provide its offered equipment at the time frame proposed in performing the contract does not provide a basis for finding that awardee engaged in "bait-and-switch" tactic, where there is no evidence, other than protester's speculation, that awardee offered the equipment knowing that it would not be available.

B-249748.3, December 29, 1992

92-2 CPD 446

Procurement

Socio-Economic Policies

- **Disadvantaged business set-asides**
- ■ **Use**
- ■ ■ **Administrative discretion**

Agency is required to set aside procurement for small disadvantaged businesses (SDB) where the same contracting office had successfully acquired the required services under a predecessor solicitation set aside for SDBs, and the contracting officer reasonably concluded that conditions for an SDB set-aside continue to exist.

B-249990, December 29, 1992

Procurement

Bid Protests

- **Non-prejudicial allegation**
- ■ **GAO review**

Agency action in relaxing specification limiting power consumption of laser without also affording protester an opportunity to submit a revised quote based on the relaxed specification does not furnish a basis for sustaining protest where record demonstrates that protester would have offered an unacceptable laser had it known of the revised specification; prejudice is an essential element of a viable protest, and where no prejudice is shown, or is otherwise evident, GAO will not sustain a protest, even if a deficiency in the procurement is evident.

B-250805.2, December 29, 1992

92-2 CPD 447

Procurement

Bid Protests

- **GAO procedures**
- ■ **GAO decisions**
- ■ ■ **Reconsideration**
- ■ ■ ■ **Comments timeliness**

Dismissal of protest because the protester failed to file comments in response to the agency report or express continued interest in the protest within the time required by the General Accounting Office Bid Protest Regulations is affirmed; the fact that the protester allegedly failed to timely receive the report because of a change in address did not alter the protester's obligation to timely express continued interest in the protest.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Where General Accounting Office (GAO) sustained protest on basis that protester's proposal was misevaluated, GAO will not consider awardee's subsequent protest that original protester could not meet solicitation's experience requirement, since this argument should have been raised during consideration of the initial protest.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Amount determination

Protester is not entitled to the costs of pursuing its claim for costs before the General Accounting Office, where the agency withdraws its objection to the amount of costs claimed within 3 weeks of the protester's submission of a statement substantiating its claim.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Approved sources
- ■ ■ ■ Technical acceptability

Procurement

Contractor Qualification

- Approved sources
- ■ Alternate sources
- ■ ■ Approval

Contracting agency may reject a proposal from an unapproved alternate source in a noncompetitive, qualified source procurement if that unapproved source does not demonstrate that it can meet the agency's technical requirements, especially where item being solicited is critical component of conventional and nuclear bomb delivery system aboard military aircraft.

Procurement

Competitive Negotiation

- Technical transfusion/leveling
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

Contention that agency engaged in impermissible technical leveling by coaching a lower cost offeror to improve its proposal is denied where the offeror submitted a strong technical proposal ranked almost identical to the protester's proposal, and where nothing in the record indicates that the second round of discussion questions elicited answers from the offeror that it might have pro-

vided earlier but for a lack of diligence in preparing its proposal and answering the agency's first round of discussion questions.

B-249364.2, December 30, 1992

92-2 CPD 453

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Price reasonableness

Agency's cancellation of solicitation after bid opening on the basis that all otherwise acceptable bids are unreasonable in price is proper where the responsive bids exceed the government estimate by a significant amount and the protester has not shown that the government estimate was unreasonably low.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Requests for proposals

Where invitation for bids (IFB) was canceled and procurement was converted to a negotiated one after rejection of all otherwise acceptable bids for price unreasonableness, agency determination to enter into negotiations with bidders prior to making any responsibility determinations was proper; Federal Acquisition Regulation § 15.103 (which refers to negotiations with each "responsible" bidder which submitted a bid under the canceled IFB) generally applies only to bidders already found nonresponsible under canceled IFB.

B-250018, December 30, 1992

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Where protester failed to furnish required narrative demonstrating the computer science expertise needed to conduct analyses and provide solutions to problem areas concerning the manufacturing, inspection, testing and packaging of the products solicited, rejection of its low offer as technically unacceptable was reasonable and consistent with the solicitation.

Procurement

Socio-Economic Policies**■ Small business set-asides****■ ■ Use****■ ■ ■ Restrictions**

The Department of Defense (DOD) Federal Acquisition Regulation Supplement provision implementing a repetitive small business set-aside rule only applies to those repetitive procurements conducted by the same contracting office; accordingly, a protest that a contracting activity was required to conduct its first procurement for an item as a small business set-aside based on the fact that another DOD agency had previously procured the same item under a series of small business set-asides is denied.

Procurement

Socio-Economic Policies**■ Small business set-asides****■ ■ Use****■ ■ ■ Administrative discretion**

Protest challenging small disadvantaged business set-aside determination on the ground that procuring activity failed to consult with another contracting office regarding item's pricing history is denied where procuring activity's fair market price estimate was reasonably based on a government-issued catalog containing current reliable pricing information.

Procurement

Contract Management**■ Contract administration****■ ■ Default termination****■ ■ ■ Resolicitation****■ ■ ■ ■ Procedures**

In repurchase for dental services contract after termination for default, where the contracting agency needed the services without delay, the contracting officer reasonably negotiated with two high ranked original offerors who were situated in the local area, on the basis of offers they submitted under the original solicitation; since one of these two offerors declined to renew his offer on the same basis as required under the initial solicitation, the agency properly made award to the other offeror.

Procurement

Contractor Qualification**■ Licenses****■ ■ State/local laws****■ ■ ■ GAO review**

Including in solicitation requirement that offeror comply with applicable Rhode Island codes does not, by itself, make the code applicable. Contractor's compliance with state code is a matter for resolution by the contractor and the state or local authorities, not by federal officials.

B-250945, December 31, 1992

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation

■ ■ ■ Technical acceptability

■ ■ ■ ■ Samples

Procurement

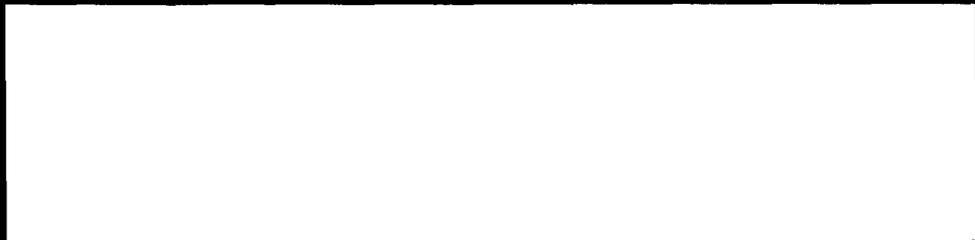
Competitive Negotiation

■ Requests for proposals

■ ■ Terms

■ ■ ■ Compliance

Agency reasonably determined awardee's sample of hot sauce met the solicitation's commercial item description. Decision to substitute results of a second chemical analysis for results of original analysis was reasonable where first analysis produced widely different readings.



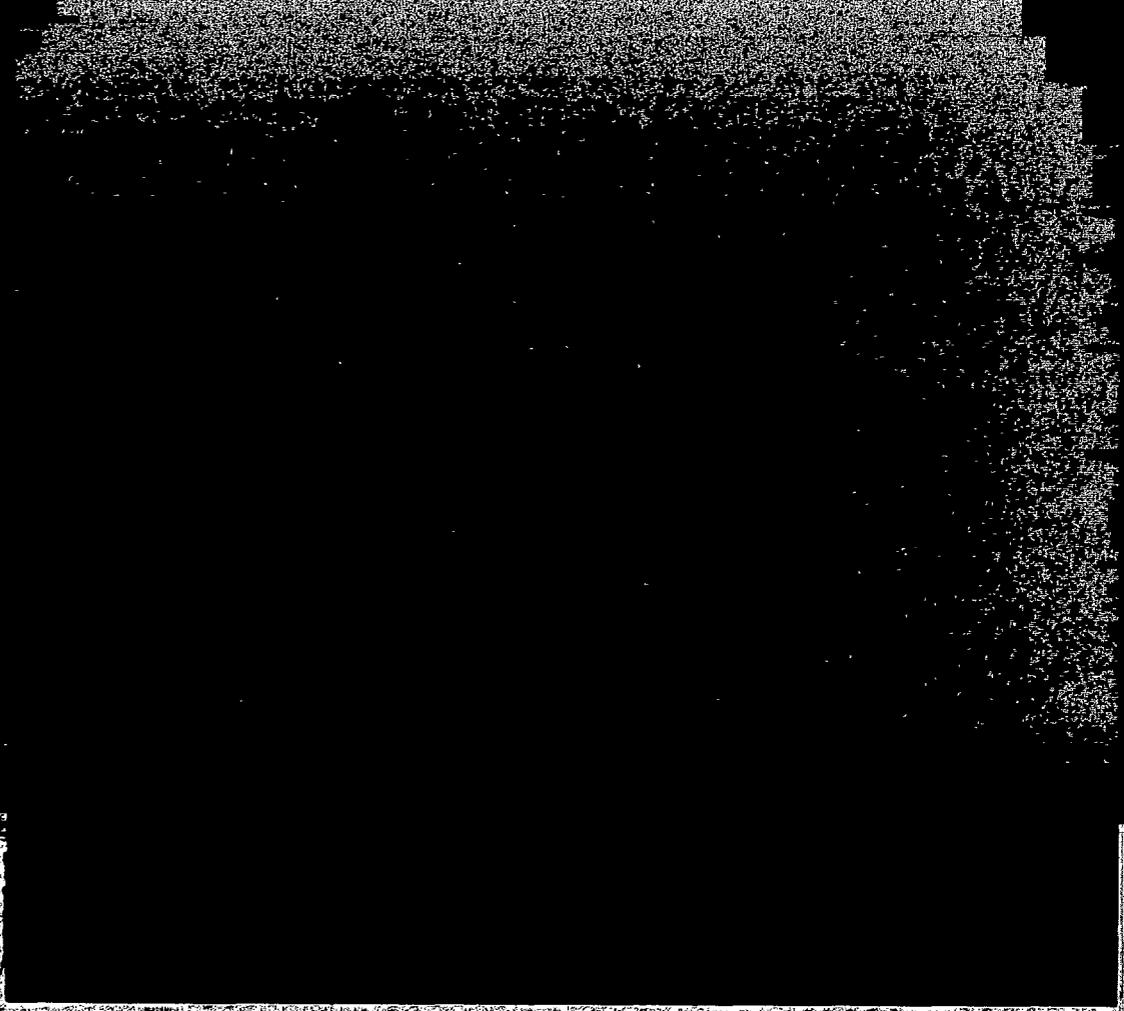
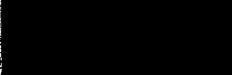
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